Rice Growers Association of California (P.R.), Inc. *and* Congresso de Uniones Industriales de Puerto Rico. Case 24–CA–6163

September 30, 1993

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

On July 31, 1991, the National Labor Relations Board issued its Decision and Order in this proceeding,[1] finding that the Respondent had not violated the Act by refusing, on request, to furnish the Union with a copy of the sales and distribution contract between its parent corporation, Rice Growers Association of California, and Casera Foods, Inc. The Board therefore dismissed the instant complaint. Thereafter, Congresso de Uniones Industriales de Puerto Rico (the Union) filed a petition for review with the First Circuit.

On June 11, 1992, the court vacated the Board's decision, and remanded the case to the Board for further proceedings consistent with its decision.[2] The court disagreed with the Board's finding that the Respondent was not in de facto control of the requested information so as to create an obligation to provide it under Section 8(a)(5) of the Act. The court indicated, citing inter alia, *Arch of West Virginia*, 304 NLRB 1089 (1991), which issued after the Board's earlier decision here, that it could not reconcile the Board's finding in this case with other Board decisions which the court indicated required ''an employer, confronted with an information request, to make reasonable efforts to obtain the relevant information from another corporation, such as a parent company.'' Thus, the court remanded the case to give the Board an opportunity to explain whether there was ''some clear basis for distinguishing this case from past precedent . . . .''

On August 19, 1992, the Board notified the parties that it had accepted the remand and invited the parties to submit statements of position. The Respondent then filed a statement of position.

The Board has reconsidered this case in light of the court's opinion and the Respondent's statement of position. The Board has decided to accept the court's decision as the law of this case. Although there might be some bases for distinguishing this case from those cited by the court, we concede that there is broad language in those opinions concerning the obligation of an employer to seek requested information from others with which it has a business relationship. Rather than rely on any factual difference between this case and those, we conclude that the Respondent's refusal to make reasonable efforts to obtain the requested information would not have satisfied its bargaining obligation under Section 8(a)(5) and Section 8(d) of the Act *if the information were deemed relevant.* Given the ground on which we disposed of this case in our earlier decision, we did not reach the issue of relevancy.[3] We must now decide that issue, i.e., whether the information requested by the Union on June 20 was necessary and relevant to the Union's performance of its role as the exclusive bargaining representative of the unit employees.[4] For the reasons stated below, we find that relevancy was not proven, and the Respondent therefore did not violate the Act by refusing to provide the requested information.

The evidence shows that the Respondent was a Puerto Rico corporation wholly owned by Rice Growers Association of California (Rice Growers) which is headquartered in Sacramento, California. On February 23, 1990,[5] the Respondent sent a letter informing the Union that it was considering closing the rice packaging and distribution facility in Puerto Rico where the unit employees worked and suggesting that they meet to bargain about this matter. Thereafter, the Respondent and the Union met on three occasions in March and April to discuss the plant closure. After the parties could not reach an agreement on severance pay, the Union filed a grievance on this subject that resulted in an arbitration case that is pending before the Arbitration Bureau of the Puerto Rico Department of Labor. The hearing in that case has been postponed pending the resolution of the unfair-labor-practice issues raised here.

On April 30, the Respondent closed its plant and permanently laid off all the unit employees. Rice Growers at some indeterminate time entered into a contract with Casera Foods, Inc. to handle the sale and distribution of the small amounts of prepackaged rice that Rice Growers continues to import into Puerto Rico. On June 20, the Union wrote a letter to the Respondent requesting a copy of the contract between Rice Growers and Casera Foods. The Union stated there, in pertinent part, that it understood Casera ''is distributing the rice which our members used to process'' and that ''[t]he unionized employees who used to work as forklift operators for the distribution of packaged rice, have been affected by the unilateral action you have taken.'' The Respondent refused to provide the Union with the requested information.

[1] 303 NLRB 980.

[2] *Congresso de Uniones Industriales de Puerto Rico v. NLRB*, No. 91–1959.

[3] See 303 NLRB at 981 fn. 5.

[4] In adopting the court's decision as the law of this case, we note that the court stated there that the Union had requested a copy of the Casera Foods contract ''while the bargaining was in progress.'' The evidence shows, however, that the Union's request for a copy of the Casera contract was made on June 20, 1990, which was nearly 2 months after the parties had ceased their ''effects'' bargaining and the Respondent had closed the plant.

[5] All dates are in 1990 unless otherwise noted.

Although noting that the Union failed to articulate well, either before or during the hearing, its reasons for wanting the Casera contract, the judge found that the Respondent's refusal to provide this document was unlawful.[6] He stressed that before the Respondent ceased operations it employed forklift operators who handled packages of rice from the time that the Respondent completed its packaging operations until the product was placed on delivery trucks. Because he found that employees of Casera Foods are performing this same work on the prepackaged rice that Rice Growers ships to Puerto Rico, the judge concluded that this ''conceivably'' could give rise to a claim by the displaced employees that the Respondent had breached the collective-bargaining agreement by subcontracting unit work. The judge also emphasized that there was at least the possibility that the Union could have formulated a bargaining proposal leading to the revival of the Respondent's forklift operations. Thus, based on his finding that under the Board's broad definition of relevance the Respondent had an obligation to supply the requested information, the judge concluded that the Respondent violated Section 8(a)(5) by refusing to provide the Union with a copy of the Casera Foods contract.[7]

It is well established that an employer has an obligation to furnish, on request, information needed by the bargaining representative for the proper performance of its statutory duties. *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 435–436 (1967). Information about the terms and conditions of employment of bargaining unit personnel is presumptively relevant. *Pfizer, Inc.*, 268 NLRB 916, 918 (1984); *Timkin Roller Bearing Co.*, 138 NLRB 15 (1962), enfd. 325 F.2d 746, 750 (6th Cir. 1963), cert. denied 376 U.S. 971 (1964). However, as the Board stated in *Ohio Power Co.*, 216 NLRB 987, 991 (1975):

> [W]here the request is for information with respect to matters occurring outside the unit, the standard is somewhat narrower (as where the precipitating issue or conduct is the subcontracting of work performable by employees within the appropriate unit) and relevance is required to be somewhat more precise. . . . The obligated is not unlimited. Thus where the information is plainly irrelevant to any dispute there is no duty to provide it.

Here, the Union has sought information regarding the contractual relationship that Rice Growers has with another business enterprise. Because this information does not relate to unit employees' terms and conditions of employment, the Union had the burden under *Ohio Power*, supra, to establish that the information was necessary and relevant to bargaining. We conclude, contrary to the judge, that the Union has not established the relevance of the information requested from the Respondent.

We stress that the only explanation the Union offered for seeking a copy of the Casera contract in its June 20 letter was that it understood Casera ''is distributing the rice which our members used to process'' and that ''[t]he unionized employees who used to work as forklift operators for the distribution of the packaged rice, have been affected by the unilateral action you have taken.'' Even assuming, as the judge did, that the information was relevant because the Union could have used it during bargaining to make a case for reestablishing that aspect of the Respondent's former operation involving the forklift drivers, we are unable to find that the Union's letter was sufficiently explicit so as to convey this objective to the Respondent. We also note that during the hearing the union official who wrote the letter offered a different explanation for seeking the information when he testified that he needed it to determine whether Casera had any liability for the severance pay owed to the unit employees. Yet, as the judge found, the General Counsel has not alleged that Casera is either a single employer with the Respondent or a successor employer. The Union also has failed to show that this information pertained to its pending grievance concerning the unit employees' severance pay or to any possible violation of the parties' collective-bargaining agreement. The Board has held that ''[r]elevance cannot be established by speculative argument alone without record evidence to support the applicability of those arguments to the present circumstances.''[8] Our recent decision in *Arch of West Virginia*, supra at 1092–1093, is distinguishable because the union in that case had ''an objective factual basis'' for believing that a single employer relationship existed there. No such allegation exists here.[9] Thus, on the basis of the sparse record before us, we find that the justification the Union gave for wanting the requested information was too vague and

[6] The judge pointed out that during the hearing the Union's president, Arturo Figueroa, gave testimony indicating his belief that the Casera contract might establish that Casera was either a successor or alter ego of the Respondent which could also be held responsible for the severance pay the Union claimed the Respondent owed the unit employees. As the judge found, however, the General Counsel did not raise these issues and the evidence failed to establish that there was any legal connection between the two entities.

[7] Although the judge apparently thought that the contract the Union had requested was between the Respondent and Casera Foods, we note that the evidence here establishes that Rice Growers, and not the Respondent, is the party to that contract.

[8] *Kentile Floors*, 242 NLRB 755, 757 (1979).

[9] This point on which we are distinguishing *Arch of West Virginia*, i.e., the requirement for a threshold showing of relevancy, is different from the issue of potential ability to obtain the requested documents. As indicated above, we have accepted as law of the case the court's view that *Arch of West Virginia* is dispositive on that question.

speculative to establish its relevance to collective bargaining.[10]

Furthermore, as stated, the Union's information request came nearly 2 months after the Respondent closed the facility on April 30, There are no allegations that the Respondent unlawfully refused to bargain about the decision to close or the effects of that decision. The General Counsel also has not alleged that the Respondent unlawfully laid off the unit employees. Because the unit employees' layoffs resulted from a lawful plant closing, we find that subsequent to April 30 there were no unit employees who could generate a bargaining obligation for the Respondent to provide the requested information.[11] As the Board stated in *Eazor Express*, supra, 271 NLRB at 497, ''[a] union's right to bargain, and thereby to obtain information, does not extend in perpetuity.'' For these reasons, we find that the Respondent had no bargaining obligation at the time the Union made its postclosure request for information on June 20. Accordingly, we shall dismiss the complaint in its entirely.

ORDER

The complaint in this case is dismissed.

MEMBER DEVANEY, dissenting.

Contrary to the majority, I would find that the information that the Union requested here was necessary and relevant to the performance of its duties as the exclusive collective-bargaining representative of the unit employees. Thus, I conclude that the Respondent violated Section 8(a)(5) of the Act by its refusal to provide such information.

The evidence shows that in its June 20, 1990 letter to the Respondent the Union sought a copy of the contract between the Respondent's parent, Rice Growers Association of California, and Casera Foods. The Union explained there that it understood Casera ''is distributing the rice which our members used to process'' and that ''[t]he unionized employees who used to work as forklift operators for the distribution of packaged rice, have been affected by the unilateral action you have taken.''

Although the Union had the burden of proving the relevance of information concerning employees outside the bargaining unit, the standard for relevancy is the same ''liberal discovery-type standard'' in all cases. *Loral Electronic Systems*, 253 NLRB 851, 853 (1980); *Curtiss-Wright Corp*., 145 NLRB 152 (1963), enfd. 347 F.2d 61 (3d Cir. 1965). Applying this liberal standard here, I agree with the judge that the Union has demonstrated the relevance of the Casera contract in its June 20 letter to the Respondent. Thus, the Union, by its reference to the ''forklift operators,'' effectively apprised the Respondent of the Union's concern that Casera was performing forklift operations formerly done by unit employees and thereby established the Union's need for any information about this work which may be included in the Casera contract. In so concluding, I note that the majority's reliance on *Eazor Express*, 271 NLRB 495 (1984), to support its finding that the Respondent had no duty to furnish the requested information, is misplaced in the present context because, unlike there, the collective-bargaining agreement between the Respondent and the Union covering these employees had not expired when the Union made its request.

For these reasons, I would adopt the judge's finding that the Casera contract was relevant to bargaining and that the Respondent violated Section 8(a)(5) by refusing to furnish it. Thus, I dissent from my colleagues' finding that the Union failed to establish the relevance of the requested information.

[10] *Fairfield Daily Republic*, 275 NLRB 7, 9 (1985), *Bohemia, Inc*., 272 NLRB 1128 (1984).

[11] Because the entire unit had been terminated at that date and the plant closed, there was also no ''unit work'' remaining to be subcontracted. That work had reverted to the control of the parent corporation, and how it chose to have the work done was not governed by the collective-bargaining agreement, absent an arguably meritorious contention that the parent corporation itself had obligations under the agreement. Neither the General Counsel nor the Charging Party made such a contention. Thus, the fact that the collective-bargaining agreement had not expired when the Union made its request to the Respondent is simply irrelevant. Therefore, although the expiration date of the contract may, as our dissenting colleague urges, distinguish this case from *Eazor Express*, 271 NLRB 495 (1984), it is a difference without a distinction.